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No. [illegible]

Supreme Court of the United States

OCTOBER TERM, A. D. 1900.

THE NATIONAL BANK OF [illegible]

vs.

[illegible]

NO. 200.

Supreme Court of the United States.

OCTOBER TERM A. D. 1900.

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THE NATIONAL BANK OF DAINGERFIELD,
Plaintiff in Error.

Vs.

G. W. RAGLAND, Defendant in Error.

NATURE AND HISTORY OF THE CASE.

The defendant in error, G. W. Ragland, brought this suit in the District court of Morris county, Texas, to recover of the plaintiff in error the penalty provided by section 5198 of the Revised Statutes of the United States, for charging, receiving and collecting of him unlawful or usurious interest. It is charged in defendant's petition that plaintiff in error "is a National Bank, organized and authorized to transact business under the acts of congress." (Tr. p. 1.) Defendant in error

bases his suit upon various transactions had with plaintiff in error, in which he obtained loans of money, the first of which transactions was on January 1st, 1895, and the last was on the 22nd day of Sept. A. D. 1897, in each and all of which transactions it is alleged that plaintiff in error knowingly charged, reserved, received and collected of defendant a higher or greater rate of interest than was permitted by law. Defendant alleges "that since the 20th day of March, 1896, he has paid to defendant, (plaintiff in error) the sum of two hundred and seventy-eight and 67-100 dollars as interest on the several and various sums of money borrowed." (Tr. p. 6.)

In each and all of the transactions had with plaintiff in error by defendant, in which defendant claims plaintiff charged and collected of him unlawful interest, it is made to appear without controversy, that defendant, when he obtained money from plaintiff, would take his note to plaintiff in error, bank, with sureties thereon, and plaintiff would pay him the face of said note less the amount charged him as interest. In other words defendant's notes were "discounted" by plaintiff. The notes owed by defendant to plaintiff were all negotiable. (Jenkins and Broadfield's evidence Tr. 12.)

Among other defenses urged by plaintiff in error, was the two years' statute of limitation. (Tr. 7-8.)

The court submitted the case to the jury upon special issues, and upon the findings of the jury entered judgment for defendant in error for two hundred and fifty-two and 5-100 dollars with interest and cost. Tr. pp 15-16-17.)

Plaintiff in error filed a motion for a new trial, and among other grounds of said motion, plaintiff in error contended that the court had erred in not sustaining and allowing its plea of limitations of two years as to a large number of the transactions had by defendant with plaintiff, and had erred in rendering judgment for defendant against plaintiff for double the sums received by it in all transactions which occurred more than two years prior to the filing of suit by defendant in error. (Tr. pp. 17–18.)

The court refused plaintiff in error's motion for a new trial and denied to it its plea of limitation. (Tr. p. 18.)

Plaintiff in error duly excepted and appealed its case to the Court of Civil Appeals of the 5th Supreme Judicial District of Texas, and assigned among other errors the action and ruling of the court in refusing and denying its plea of limitation. and prayed for a reversal of said judgment. (Tr. 18–24–25.)

By order of the court, the case was transferred from the 5th to the 4th Supreme Judicial District of the State, and on the day of A. D. 1899, the Court of Civil Appeals of the 4th Supreme Judicial District handed down its decision affirming the decision and judgment of the trial court. (Tr, p. 27–28.)

The plantiff in error in due time filed its motion for a re-hearing, and specially urged as error the refusal of the court to allow and sustain its plea of limitation as to all of the transactions set out by defendant in error's petition occurring more than two years before this suit was filed. (Tr. pp. 28–29.)

The Court of Civil Appeals in a written opinion denied plaintiff in error's motion for a re-hearing, and refused again to allow its plea of limitation. (Tr. p. 29.)

Plaintiff in error applied to the State Supreme Court for a writ of error to the Court of Civil Appeals, but the Supreme Court refused the writ on the ground that it was without jurisdiction, and that the decision of the Court of Civil Appeals was final. (Tr. p. 30.)

The plaintiff in error has duly perfected its appeal to this court by writ of error, from the judgment of the Court of Civil Appeals of the 4th Supreme Judicial District of Texas, and has assigned the following errors committed by said court to-wit:

1st. The Court of Civil Appeals erred in holding that the limitation on the suit for penalty for charging and collecting usurious interest did not begin to run until said usurious interest was paid, and that the right to recover the penalty was not barred.

2nd. The Court of Civil Appeals erred in not holding that limitation on the right to recover the penalty began when the usurious transaction occurred, which was when the money was borrowed and when the interest was deducted. (Tr. p. 32.)

The foregoing assignments of error raise substantially the same question and will therefore be treated as one.

FIRST PROPOSITION UNDER ASSIGNMENT OF ERROR.

Defendant in error's suit being to recover the penalty provided by section 5198 of the Revised Statutes

of the United States, the period of limitation provided by said section began to run against each of the transactions declared on by defendant in error in his petition, when he made and delivered his negotiable promissory notes to plaintiff in error, and received from plaintiff the amount for which said notes were given in money, less the amount the plaintiff in error "discounted" said notes or reserved therefrom as interest, and it appearing that a large number of the transactions sued on by defendant in error, occurred more than two years before the filing of his suit, such transactions and so much of defendant's cause of action based thereon were barred by limitation when his suit was filed.

STATEMENT.

Defendant in error filed his suit March 28th A. D. 1898. (Tr. file mark on petition, page 1.) Of the transactions set out in his petition in which he alleges that the plaintiff in error charged him unlawful interest are the following, with dates of each transaction, amount of money received and amount of interest charged, all as set out in his petition, viz: January 1st, 1895, amount received $348.00, interest charged $42.00; Nov. 12th, 1895, amount received $26.25, interest charged $1.00; Nov. 23rd, 1895, amount received $15.00, interest charged $1.00; Dec. 11, 1895, amount received $46.85, to which was added $1.00 interest; January 22nd, 1896, amount received $597.60, to which was added $125.00 as interest for one year. (On this transaction defendant in error in his evidence states the plaintiff only collected of him as interest the sum of $77.47. Tr. defendant's

evidence page 9.) February 26, 1896, amount received $15.00, to which was added $1.00 as interest, for 60 days; January 2nd, 1896, amount received $125.00, to which was added the sum of $17.15 as interest for said loan till Nov. 1st, 1896. In each and all of these transactions plaintiff in error would take defendant's promissory negotiable note with sureties for amount paid defendant and amount charged as interest as above stated, and the note on its face only bore interest after maturity. (Tr. defendant in error's petition, page 1 to 7 inclusive.)

On these transactions which occurred more than two years previous to the filing of defendant's suit, plaintiff collected as interest $140.62. This amount is included in the jury's finding that defendant paid to plaintiff in error as interest the sum of $233.05. (Tr. p. 15.) It may be stated here in explanation of the judgment being for only $252.05, that the court allowed defendant to recover double the amount of unlawful interest paid by him to plaintiff in error, to wit: $466.10, but deducted therefrom amount due plaintiff by defendant on a promissory note which plaintiff in error plead as a counter claim or offset. (Tr. p.)

AUTHORITIES.

Revised Statutes U. S., Section 5198.

Bobo vs. Peoples National Bank of Shelbyville, 21 S. W. 888.

Henderson National Bank vs Alves, 91st Ky. 142, 15 S. W. 132.

SECOND PROPOSITION UNDER ASSIGNMENT OF ERROR.

The execution of a negotiable promissory note for the interest is "payment" thereof within the meaning of the statute.

AUTHORITIES.

Lebanon National Bank vs. Karmany, 98 Pa. 65.

J. M. TURNER,

Att'y for Plaintiff in Error, The National Bank of Daingerfield.